IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 30TH OCTOBER 2006 / 8TH KARTHIKA 1928

ST.Rev..No. 54 of 2004()

AGAINST THE ORDER DATED / / IN 1997-1998 IN
TA.613/2002 of S.T.A.T.ADDL.BENCH,ERNAKULAM
.....

REVISION PETITIONER:

SWEET 'O' SOUR,
PALACE ROAD, MATTANCHERY.

BY ADV. SRI.C.SANKUNNY

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY GOVERNMENT PLEADER.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 30/10/2006, ALONG WITH STRV NO. 75 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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petitioner is that the product is neither a food preparation nor is it packed in air-tight containers. In order to consider the case of the petitioner, we have to necessarily refer to the relevant entry, Entry 56 available in the First Schedule to the Statute at the relevant time. Therefore we extract the said entry below:

56.	Food including vegetative or animal preparations sold in air tight containers and food colours essences of all kinds and powders or tablets used for making food preparations.	At the point of first sale in the State by a dealer who is liable to tax under Section 5	12.5%

2. The first question to be considered is whether the item sold is food including vegetative or animal preparation. As already stated, the product is a vegetative preparation made of Moth and Channa flour, Potato, Edible oil, Edible salt, spices and pulses. It is clear from the product description given in the packet that it is a fried crispy mixture and the product can be taken as a snack item. In fact it is further stated that the manufacturer is a member of the Snack Food Association, Virginia, U.S.A.

3. According to counsel for petitioner, snacks of the kind marketed by petitioner are not food. We are unable to accept this contention, because the meaning of food in Webster's International Dictionary is as follows:

> "Nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital processes."

The food preparation sold by the petitioner made of pulses, Channa flour etc., in oil is a nutritive food serving all purposes of food. In fact the manufacturers themselves sell it as a snack, which is certainly a food preparation. Therefore, we are unable to accept petitioner's contention that the snack item sold by the petitioner is not a food preparation and we, therefore, reject this contention.

4. The next contention raised by counsel for the petitioner is that the item is not sold in air-tight containers. He has relied on the decision of this court reported in **Bymore Food Products v. State of**

Kerala ((2002) 126 STC 26), wherein this court held that pickles sold in glass bottles cannot be treated as an item sold in air-tight containers. It is to be noted that this court in that case found that pickle is preserved either in oil or by using preservative, salt etc., and not by virtue of the air-tight sealing of the container. Air-tight sealing only means that the packet does not admit air inside. The packing material used by the petitioner is an aluminium foil with an inside plastic layer. In fact the packet is sealed on either side by fusion of the inside plastic so that no air enters inside and the crispiness of the product is retained as long as it is not opened. Counsel for petitioner has contended that air-tight containers are generally solid containers made of tin, glass, plastic etc., and alumimium foil or paper packets are not covered by the expression air-tight containers. Even though containers generally have solid materials made of glass, tin, plastic or the like, we do not think any such restricted meaning is warranted in the description of the product as contained in Entry 56, which covers all food preparation sold in air-tight containers. The packet in which the petitioner's product is packed, is admittedly air-tight in as much as it does not

allow air to enter it. So much so, this is an item packed in air-tight packet.

5. The remaining aspect of the question is whether the word "container" covers a packet of aluminium foil with plastic lining inside. As already stated, though containers generally understood are made of solid material, the same does not mean that in all cases packing materials should be solid materials. Packing material is a relative concept and as and when an item is used to pack another thing, it is a packing material and packing cover is certainly a packing material. It is worthwhile to make a reference to Section 5(3) of the KGST Act, which provides for concessional rate on containers or packing materials etc., wherein, under the Explanation, container includes even gunny bags. In such circumstances, we feel, all food preparations sold in air-tight packings, whatever be the material used for packing, would fall within the description of food including vegetative or animal preparation sold in air-tight containers.

We therefore uphold the finding of the Tribunal and hold that petitioner's product falls under Entry 56 at the relevant time and

consequently dismiss the Sales Tax Revisions.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

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